



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2018-0778; FRL-9987-38-Region 9]**

#### **Findings of Failure to Submit Complete State Implementation Plans Required for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS; California; San Joaquin Valley**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to find that California has failed to submit complete state implementation plans (SIPs) required under the Clean Air Act (CAA or “Act”) to implement the 1997, 2006, and 2012 national ambient air quality standards (NAAQS or “standards”) for fine particulate matter (PM<sub>2.5</sub>) in the San Joaquin Valley. For the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, California was required to submit by December 31, 2016, a SIP submission that provides for, among other things, annual reductions in emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory for the area. For the 2006 24-hour PM<sub>2.5</sub> NAAQS, California was required to submit by August 21, 2017, a SIP submission that meets the requirements for Serious PM<sub>2.5</sub> nonattainment areas, including the requirement for best available control measures (BACM). For the 2012 annual PM<sub>2.5</sub> NAAQS, California was required to submit by October 15, 2016, a SIP submission that meets the requirements for Moderate PM<sub>2.5</sub> nonattainment areas, including the requirement for reasonably available control measures (RACM). California submitted substantial portions of each of these

required SIP submissions as part of an integrated plan on November 16, 2018, but each of these submissions fails to meet the EPA's minimum criteria for completeness.

If the EPA has not affirmatively found that the State has submitted complete SIPs that correct the deficiencies in each of these SIP submissions within 18 months of this finding, the offset sanction will apply in the area. If within 6 additional months the EPA still has not affirmatively determined that the State has submitted complete SIPs that correct the deficiencies, the highway funding sanction will apply in the area. No later than 2 years after the EPA makes these findings, if the State has not submitted, and the EPA has not approved, each of the required SIP submissions, the EPA must promulgate a federal implementation plan (FIP) to address any remaining requirements.

**DATES:** This action will be effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0778. Generally, documents in the docket are listed and publicly available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, EPA Region IX, (415) 947-4192, tax.wienke@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

### **Notice and Comment Under the Administrative Procedure Act (APA)**

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for taking this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit complete SIPs, or elements of SIPs, required by the CAA, where a state has made incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

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## I. Background

### A. Statutory Requirements

#### 1. 1997 PM<sub>2.5</sub> NAAQS

The EPA first promulgated NAAQS for PM<sub>2.5</sub> on July 18, 1997, setting the primary and secondary annual standards at 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and the primary and secondary 24-hour standards at 65  $\mu\text{g}/\text{m}^3$ .<sup>1</sup> Effective April 5, 2005, the EPA designated the San Joaquin Valley as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS.<sup>2</sup> Following a January 4, 2013 decision of the U.S. Court of Appeals for the D.C. Circuit (“D.C. Circuit”) remanding the EPA’s 2007 PM<sub>2.5</sub> Implementation Rule for the 1997 PM<sub>2.5</sub> NAAQS,<sup>3</sup> the EPA published a final rule on June 2, 2014, classifying the San Joaquin Valley, among other areas, as a “Moderate” nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS under subpart 4, part D of title I of the Act.<sup>4</sup>

Effective May 7, 2015, the EPA reclassified the San Joaquin Valley as a “Serious” nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS.<sup>5</sup> Upon reclassification as a Serious Area, the San Joaquin Valley became subject to a December 31, 2015 deadline under CAA section 188(c)(2) for attaining the 1997 PM<sub>2.5</sub> NAAQS. On February 9, 2016, the EPA proposed to grant

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<sup>1</sup> 62 FR 38652 (July 18, 1997) (codified at 40 CFR 50.7).

<sup>2</sup> 70 FR 944 (January 5, 2005).

<sup>3</sup> *Natural Resources Defense Council v. EPA*, 706 F.3d. 428 (D.C. Cir. 2013) (“*NRDC*”). In *NRDC*, the court held that the EPA erred in implementing the 1997 PM<sub>2.5</sub> standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to nonattainment areas for particles less than or equal to 10  $\mu\text{m}$  in diameter (PM<sub>10</sub>) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 PM<sub>2.5</sub> standards under subpart 4 because PM<sub>2.5</sub> falls within the statutory definition of PM<sub>10</sub> and is thus subject to the same statutory requirements as PM<sub>10</sub>. The court remanded the rule, without vacatur, and instructed the EPA “to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.”

<sup>4</sup> 79 FR 31566.

<sup>5</sup> 80 FR 18528 (April 7, 2015).

the State's request for extensions of the December 31, 2015 attainment date under CAA section 188(e), to December 31, 2018, for the 1997 24-hour PM<sub>2.5</sub> NAAQS and to December 31, 2020, for the 1997 annual PM<sub>2.5</sub> NAAQS in the San Joaquin Valley.<sup>6</sup> On October 6, 2016, after considering public comments, the EPA denied California's request for these extensions of the attainment date.<sup>7</sup> Consequently, on November 23, 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS by the December 31, 2015 Serious Area attainment date.<sup>8</sup> This determination triggered a requirement for California to submit, by December 31, 2016, a revised PM<sub>2.5</sub> attainment plan that satisfies the requirements of CAA section 189(d).<sup>9</sup>

The section 189(d) plan must, among other things, demonstrate expeditious attainment of the 1997 PM<sub>2.5</sub> NAAQS within the time period provided under CAA section 179(d) and provide for annual reductions in emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment.<sup>10</sup> The section 189(d) plan must also include, among other things:

1. a comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));
2. plan provisions that require reasonable further progress (RFP) (CAA 172(c)(2));

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<sup>6</sup> 81 FR 6936. California's request for extension of the Serious Area attainment date for the San Joaquin Valley accompanied its Serious Area attainment plan for the 1997 PM<sub>2.5</sub> NAAQS and related motor vehicle emission budgets, submitted June 25, 2015 and August 13, 2015, respectively.

<sup>7</sup> 81 FR 69396.

<sup>8</sup> 81 FR 84481.

<sup>9</sup> CAA section 189(d).

<sup>10</sup> Id. and 40 CFR 51.1010(c).

3. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c)); and

4. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)).

## 2. 2006 PM<sub>2.5</sub> NAAQS

On October 17, 2006, the EPA revised the 24-hour PM<sub>2.5</sub> NAAQS by lowering it from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup>.<sup>11</sup> Effective December 14, 2009, the EPA designated the San Joaquin Valley as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The EPA initially classified the San Joaquin Valley area as a Moderate Area effective July 2, 2014, and reclassified the area as a Serious Area for the 2006 PM<sub>2.5</sub> NAAQS effective February 19, 2016.<sup>12</sup>

Upon the area's reclassification as a Serious Area for the 2006 PM<sub>2.5</sub> NAAQS, California was required to submit additional SIP revisions by August 21, 2017, to satisfy the statutory requirements that apply to Serious PM<sub>2.5</sub> nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.<sup>13</sup>

The Serious Area plan must include, among other things:

1. a comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));

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<sup>11</sup> 71 FR 61144 (October 17, 2006) (codified at 40 CFR 50.13).

<sup>12</sup> 79 FR 31566 (June 2, 2014), 81 FR 2993 (January 20, 2016), and 81 FR 42263 (June 29, 2016) (correcting amendment).

<sup>13</sup> Id.

2. provisions for the implementation of BACM, including best available control technology (BACT), for sources of direct PM<sub>2.5</sub> and all PM<sub>2.5</sub> plan precursors no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

3. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019, is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and no later than December 31, 2024, (CAA sections 188(c)(2) and 189(b)(1)(A));<sup>14</sup>

4. plan provisions that require RFP (CAA 172(c)(2));

5. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

6. provisions to assure that control requirements applicable to major stationary sources of PM<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the area (CAA section 189(e));

7. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

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<sup>14</sup> A state seeking an extension of a Serious Area attainment date under section 188(e) must also meet additional requirements under that provision, including the requirement to demonstrate that the SIP for the area includes the most stringent measures that are included in any SIP or are achieved in practice in any state, and can feasibly be implemented in the area. CAA section 188(e).

8. a revision to the nonattainment NSR program to lower the applicable “major stationary source” thresholds from 100 tpy to 70 tpy (CAA section 189(b)(3)).

### 3. 2012 PM<sub>2.5</sub> NAAQS

On December 14, 2012, the EPA revised the primary annual PM<sub>2.5</sub> standard by lowering it from 15.0 to 12.0 µg/m<sup>3</sup>.<sup>15</sup> Effective April 15, 2015, the EPA designated and classified the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual PM<sub>2.5</sub> NAAQS.<sup>16</sup> This designation and classification triggered a requirement for California to submit a Moderate Area plan addressing attainment of the 2012 annual PM<sub>2.5</sub> NAAQS in the San Joaquin Valley no later than 18 months after the designation, i.e., by October 15, 2016.<sup>17</sup>

The Moderate Area plan must include, among other things:

1. a comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));
2. provisions for the implementation of RACM, including reasonably available control technology (RACT), for sources of direct PM<sub>2.5</sub> and all PM<sub>2.5</sub> plan precursors no later than 4 years after designation (CAA section 189(a)(1)(C));
3. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2021, or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B));
4. plan provisions that require RFP (CAA 172(c)(2));

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<sup>15</sup> 78 FR 3086 (January 15, 2013) (codified at 40 CFR 50.18).

<sup>16</sup> 80 FR 2206 (January 15, 2015).

<sup>17</sup> CAA section 189(a)(2)(B).



5. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));
6. provisions to assure that control requirements applicable to major stationary sources of PM<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the area (CAA section 189(e));
7. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and
8. Any revisions to the nonattainment NSR program necessary to implement the requirements of CAA section 189(a)(1)(A) for the 2012 PM<sub>2.5</sub> NAAQS.

*B. Minimum Criteria for Completeness of a SIP Submission*

Section 110(k)(1)(A) of the CAA requires that the EPA promulgate minimum criteria that any plan submission must meet before the EPA is required to act on such submission. The EPA has promulgated these criteria at 40 CFR part 51, appendix V. We refer to these requirements as the "completeness criteria." Section 2.1 of the completeness criteria requires that each plan submission include, among other things: (1) evidence that the State has adopted the plan in the State code or body of regulations, including the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date, and (2) evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan. Section 2.2 of the completeness

criteria requires that each plan submission contain certain technical support, including (1) a demonstration that the SIP will protect RFP if approved, and (2) modeling to support the proposed revision. The completeness criteria also identify other administrative materials and technical support documentation that must be included in each plan submission.<sup>18</sup>

Section 110(k)(2) of the CAA requires the EPA to act on a SIP submission only after the State has submitted a SIP submission (or part thereof) that meets the completeness criteria, either by EPA determination or by operation of law under CAA section 110(k)(1)(B).

### *C. California's SIP Submissions*

On November 16, 2018, California submitted to the EPA a draft of the “2018 Plan for the 1997, 2006, and 2012 PM<sub>2.5</sub> Standards” (“2018 PM<sub>2.5</sub> Plan”), a comprehensive plan for attainment of the PM<sub>2.5</sub> NAAQS in the San Joaquin Valley. This submission includes substantial portions of a section 189(d) plan addressing attainment of the 1997 PM<sub>2.5</sub> NAAQS, a Serious Area plan addressing attainment of the 2006 PM<sub>2.5</sub> NAAQS, and a Moderate Area plan addressing attainment of the 2012 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley. The San Joaquin Valley Air Pollution Control District adopted the 2018 PM<sub>2.5</sub> Plan on November 15, 2018.

As a threshold matter, however, the California Air Resources Board (CARB) noted in its letter transmitting the SIP submission to the EPA that CARB had not yet presented the 2018 PM<sub>2.5</sub> Plan to its Board or adopted it for submission to the EPA as a revision to the California SIP. CARB stated that it was providing the submission to the EPA now so that EPA staff can

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<sup>18</sup> See generally 40 CFR part 51, appendix V, sections 2.1 and 2.2.

begin its review while CARB completes the final step in plan development when it considers approval of the 2018 PM<sub>2.5</sub> Plan at its hearing scheduled for January 24-25, 2019.<sup>19</sup>

Accordingly, the EPA cannot at this time find that California has submitted the required complete PM<sub>2.5</sub> SIP revisions for the San Joaquin Valley nonattainment area. CARB's November 16, 2018 SIP submission does not include evidence that the State has adopted the plan in the State code or body of regulations or evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan, as required by 40 CFR part 51, appendix V, section 2.1. Based on these deficiencies alone, the SIP submission fails to meet the EPA's minimum completeness criteria. In addition, until we receive the formal SIP submission, we cannot determine whether the plan that CARB ultimately adopts will contain all of the necessary components of the required PM<sub>2.5</sub> attainment plans for the San Joaquin Valley and the associated technical support required for each submission under 40 CFR part 51, appendix V, section 2.2.

We note, however, that CARB's submission represents a significant step in the State's and District's multi-year effort to address the Act's attainment planning requirements for the PM<sub>2.5</sub> NAAQS in the San Joaquin Valley, and we commit to continue working closely with both agencies as they implement and enforce the requirements of these plans going forward.

## **II. Consequences of Findings of Failure to Submit Complete SIPs**

Under section 110(k)(1)(C) of the Act, where the EPA determines that a SIP submission (or part thereof) does not meet the EPA's minimum completeness criteria established in 40 CFR

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<sup>19</sup> Letter dated November 16, 2018, from Kurt Karperos, Deputy Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

part 51, appendix V, the state shall be treated as not having made the submission (or part thereof). Sections 179(a) and 110(c) of the CAA establish specific consequences for failure to submit complete SIP submissions or SIP elements required under part D of title I of the Act, including the eventual imposition of mandatory sanctions in the affected area.

In accordance with the EPA's sanctions sequencing rule in 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) would apply in the San Joaquin Valley area 18 months after the effective date of these findings, if the EPA has not affirmatively determined by that date that the State has submitted a complete SIP addressing the deficiency that is the basis for these findings. If, within 6 months after the offset sanction applies, the EPA still has not affirmatively determined that the State has submitted a complete SIP addressing the deficiency that is the basis for the findings, the highway funding sanction identified in CAA section 179(b)(1) would also apply in the San Joaquin Valley. Under 40 CFR 52.31(d)(5), neither sanction would apply if the EPA determines within 18 months after the effective date of these findings that the State has submitted a complete SIP submission addressing the deficiency that is the basis for these findings.

Additionally, a finding of failure to submit a complete SIP submission triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years after the finding, unless the state has submitted, and the EPA has approved, the required SIP submittal. Thus, the EPA would be required to promulgate a PM<sub>2.5</sub> FIP for the San Joaquin Valley, in relevant part, if California does not submit and the EPA does not approve all of the necessary SIP submissions within 2 years after the effective date of these findings.

### **III. Final Action**

The EPA is finding that California has failed to submit complete SIP revisions for implementation of the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley as required under subparts 1 and 4 of part D, title I of the CAA and the PM<sub>2.5</sub> SIP Requirements Rule. The consequences of these findings are discussed above in section II of this notice.

### **IV. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### *C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirements in the CAA for states to submit SIPs under sections 172, 188 and 189 which address the statutory requirements that apply to areas designated as nonattainment for the PM<sub>2.5</sub> NAAQS.

#### *D. Regulatory Flexibility Act (RFA)*

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

The rule is a finding that California has not submitted the necessary SIP revisions.

*E. Unfunded Mandates Reform Act of 1995 (UMRA)*

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 4 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that California has failed to submit certain SIP revisions that satisfy the nonattainment area planning

requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area and does not directly or disproportionately affect children.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area, this action does not directly affect the level of protection provided to human health or the environment.

*L. Congressional Review Act (CRA)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The

EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *M. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**



Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Administrative practice and procedures, Incorporation by reference, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Dated: November 19, 2018.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2018-26359 Filed: 12/4/2018 8:45 am; Publication Date: 12/6/2018]